

108TH CONGRESS
1ST SESSION

S. 513

To amend the Internal Revenue Code of 1986 and the Securities Exchange Act of 1934 to provide for the treatment of corporate expatriation transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2003

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Securities Exchange Act of 1934 to provide for the treatment of corporate expatriation transactions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate Tax Fair-
5 ness and Shareholder Rights Act of 2003”.

1 **SEC. 2. PREVENTION OF CORPORATE EXPATRIATION TO**
2 **AVOID UNITED STATES INCOME TAX.**

3 (a) IN GENERAL.—Paragraph (4) of section 7701(a)
4 of the Internal Revenue Code of 1986 (defining domestic)
5 is amended to read as follows:

6 “(4) DOMESTIC.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the term ‘domestic’ when ap-
9 plied to a corporation or partnership means cre-
10 ated or organized in the United States or under
11 the law of the United States or of any State
12 unless, in the case of a partnership, the Sec-
13 retary provides otherwise by regulations.

14 “(B) CERTAIN CORPORATIONS TREATED
15 AS DOMESTIC.—

16 “(i) IN GENERAL.—The acquiring cor-
17 poration in a corporate expatriation trans-
18 action shall be treated as a domestic cor-
19 poration.

20 “(ii) CORPORATE EXPATRIATION
21 TRANSACTION.—For purposes of this sub-
22 paragraph, the term ‘corporate expatria-
23 tion transaction’ means any transaction
24 if—

25 “(I) a nominally foreign corpora-
26 tion (referred to in this subparagraph

as the ‘acquiring corporation’) acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

“(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

“(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting ‘50 percent’ for ‘80 percent’ with respect to any nominally foreign corporation if—

“(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

1 “(II) the stock of the corporation
2 is publicly traded and the principal
3 market for the public trading of such
4 stock is in the United States.

5 “(iv) PARTNERSHIP TRANSACTIONS.—
6 The term ‘corporate expatriation trans-
7 action’ includes any transaction if—

8 “(I) a nominally foreign corpora-
9 tion (referred to in this subparagraph
10 as the ‘acquiring corporation’) ac-
11 quires, as a result of such transaction,
12 directly or indirectly properties consti-
13 tuting a trade or business of a domes-
14 tic partnership,

15 “(II) immediately after the trans-
16 action, more than 80 percent of the
17 stock (by vote or value) of the acquir-
18 ing corporation is held by former
19 partners of the domestic partnership
20 or related foreign partnerships (deter-
21 mined without regard to stock of the
22 acquiring corporation which is sold in
23 a public offering related to the trans-
24 action), and

1 “(III) the acquiring corporation
2 meets the requirements of subclauses
3 (I) and (II) of clause (iii).

4 “(v) SPECIAL RULES.—For purposes
5 of this subparagraph—

6 “(I) a series of related trans-
7 actions shall be treated as 1 trans-
8 action, and

9 “(II) stock held by members of
10 the expanded affiliated group which
11 includes the acquiring corporation
12 shall not be taken into account in de-
13 termining ownership.

14 “(vi) OTHER DEFINITIONS.—For pur-
15 poses of this subparagraph—

16 “(I) NOMINALLY FOREIGN COR-
17 PORATION.—The term ‘nominally for-
18 eign corporation’ means any corpora-
19 tion which would (but for this sub-
20 paragraph) be treated as a foreign
21 corporation.

22 “(II) EXPANDED AFFILIATED
23 GROUP.—The term ‘expanded affili-
24 ated group’ means an affiliated group

(as defined in section 1504(a) without regard to section 1504(b)).

“(III) RELATED FOREIGN PARTNERSHIP.—A foreign partnership is related to a domestic partnership if they are under common control (within the meaning of section 482), or they shared the same trademark or tradename.”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed after December 31, 1996, and before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SEC. 3. DISCLOSURE OF CORPORATE EXPATRIATION TRANSACTIONS.

(a) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

1 “(i) PROXY SOLICITATIONS IN CONNECTION WITH
2 CORPORATE EXPATRIATION TRANSACTIONS.—

3 “(1) DISCLOSURE TO SHAREHOLDERS OF EF-
4 FECTS OF CORPORATE EXPATRIATION TRANS-
5 ACTION.—The Commission shall, by rule, require
6 that each domestic issuer shall prominently disclose,
7 as a separate and distinct document accompanying
8 each proxy statement relating to a corporate expa-
9 triation transaction—

10 “(A) the number of employees of the do-
11 mestic issuer that would be located in the new
12 foreign jurisdiction of incorporation or organi-
13 zation of that issuer upon completion of the
14 corporate expatriation transaction;

15 “(B) the percentage of the total assets of
16 the domestic issuer that would be located within
17 the new foreign jurisdiction of incorporation or
18 organization of that issuer upon completion of
19 the corporate expatriation transaction;

20 “(C) how the rights of holders of the secu-
21 rities of the domestic issuer would be impacted
22 by a completed corporate expatriation trans-
23 action;

24 “(D) that as a result of a completed cor-
25 porate expatriation transaction, any taxable

1 holder of the securities of the domestic issuer
 2 shall be subject to the taxation of any capital
 3 gains realized with respect to such securities;
 4 and

5 “(E) the estimated tax benefit that would
 6 be realized by the domestic issuer upon comple-
 7 tion of the corporate expatriation transaction.

8 “(2) DISCLOSURE TO COMMISSION OF RESULTS
 9 OF VOTE.—Upon the approval of any corporate ex-
 10 patriation transaction by the holders of the securi-
 11 ties of a domestic issuer, that issuer shall provide to
 12 the Commission, in a form and manner to be deter-
 13 mined by the Commission, information as to how
 14 each holder of record of a voting security of that do-
 15 mestic issuer (or a proxy there for) voted with re-
 16 spect to the corporate expatriation transaction.

17 “(3) DEFINITIONS.—In this subsection, the fol-
 18 lowing definitions shall apply:

19 “(A) CORPORATE EXPATRIATION TRANS-
 20 ACTION.—The term ‘corporate expatriation
 21 transaction’ means any transaction, or series of
 22 related transactions, in which an entity orga-
 23 nized under the laws of a foreign country ac-
 24 quires, directly or indirectly, substantially all of

1 the voting securities in, or substantially all of
2 the assets of, a domestic issuer, and—

3 “(i) immediately after completion of
4 the transaction, more than 80 percent of
5 the securities (by vote or value) of the ac-
6 quiring foreign entity will be held by per-
7 sons that were security holders of the do-
8 mestic issuer immediately prior to the
9 transaction; or

10 “(ii) immediately after completion of
11 the transaction, more than 50 percent of
12 the securities (by vote or value) of the ac-
13 quiring foreign entity will be held by per-
14 sons that were security holders of the do-
15 mestic issuer immediately prior to the
16 transaction, and—

17 “(I) such foreign entity will not
18 have substantial business activities in
19 the foreign country in which it is or-
20 ganized; and

21 “(II) the securities of the foreign
22 entity will be publicly traded, and the
23 principal market for the public trad-
24 ing of such securities will be in the
25 United States.

1 “(B) DOMESTIC ISSUER.—The term ‘do-
 2 mestic issuer’ means an issuer created or orga-
 3 nized in the United States or under the law of
 4 the United States or of any State.”.

5 (b) EFFECTIVE DATE.—Section 14(i) of the Securi-
 6 ties Exchange Act of 1934 (as added by this section) shall
 7 apply with respect to corporate expatriation transactions
 8 (as defined in that section 14(i)) proposed on and after
 9 the date of enactment of this Act.

10 **SEC. 4. MODIFICATIONS TO EXPENSING UNDER SECTION**

11 **179.**

12 (a) INCREASE OF AMOUNT WHICH MAY BE EX-
 13 PENSED.—

14 (1) IN GENERAL.—Paragraph (1) of section
 15 179(b) of the Internal Revenue Code of 1986 (relat-
 16 ing to dollar limitation) is amended to read as fol-
 17 lows:

18 “(1) DOLLAR LIMITATION.—The aggregate cost
 19 which may be taken into account under subsection
 20 (a) for any taxable year shall not exceed \$75,000
 21 (\$25,000 in the case of taxable years beginning after
 22 December 31, 2007).”.

23 (2) INCREASE IN PHASEOUT THRESHOLD.—
 24 Paragraph (2) of section 179(b) of such Code is
 25 amended by striking “\$200,000” and inserting

1 “\$325,000 (\$200,000 in the case of taxable years
2 beginning after December 31, 2007)”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service in
5 taxable years beginning after December 31, 2002.

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